

Department of Industrial Relations (DIR)
Written Testimony for The Little Hoover Commission Hearing on Labor
Trafficking

DIR has answered the following questions that were provided by The Little Hoover Commission.

- 1. Please provide a description of your department's (DIR's) authority to identify and otherwise combat labor trafficking and the resources/staff available to support this work. What barriers, if any, make it difficult to fulfill this role?**
 - The mission of the Department of Industrial Relations (DIR) is to improve working conditions for California's wage earners and to advance opportunities for profitable employment in California. DIR administers and enforces laws governing wages, hours and breaks, overtime, retaliation, workplace safety and health, apprenticeship training programs, and medical care and other benefits for injured workers.
 - DIR does not have authority to investigate labor trafficking cases or have staff or resources dedicated to combatting labor trafficking.
- 2. Experts have told us it is helpful to include investigators who are sworn peace officers and also knowledgeable about labor laws in investigating labor trafficking cases. Could you speak to the work your criminal investigations unit does and describe what it would take to amplify their presence in finding and fighting labor trafficking?**
 - In order to enhance the state's ability to fight wage theft and worker exploitation, the Criminal Investigation Unit (CIU) of the Labor Commissioner's Office (LCO), was established to conduct criminal investigations of employers who engage in illegal conduct. The CIU is tasked with leveling the playing field for California employers by raising the stakes for those who underpay, underbid and under-report in violation of the law. It is designed to investigate employers who perpetrate wage theft and other criminal activities against workers. Made up of sworn peace officers, under the authority of Penal Code §830.3(g) and Labor Code §95, who have completed the police academy, the CIU reflects our state's recognition that such crimes harm not only individual workers but also communities. The CIU has the power to conduct investigations into criminal activity, arrest employers for violating the state's penal code and labor laws, file criminal cases with the district attorney's office, and obtain and serve inspection and search warrants. CIU investigators have access to confidential law enforcement data and information like CLETS (California Law Enforcement Telecommunications System).
 - To facilitate the Division's criminal enforcement efforts, the LCO has cultivated working relationships with district attorneys throughout California, who may utilize the CIU investigations as the basis for criminal prosecutions. The CIU assists the CA Department of Justice (DOJ) and local district attorneys in prosecuting the labor trafficking aspect of their human trafficking cases. For example, the CIU makes referrals to and works with various law enforcement agencies and task forces, including the CA Department of Justice (DOJ), the L.A. Regional Human Trafficking Taskforce, the Fresno District Attorney's Office and the Santa Clara County District Attorney's Office.
 - The LCO has presented training on "How to Prosecute Wage Theft" to prosecutors and investigators, including the CIU investigators. The training was to learn how to identify, investigate and prosecute workplace crimes, including wage theft, witness intimidation & retaliation, extortion, and "human trafficking and forced labor". The CIU investigators

also received “human trafficking” training, P.C. §236.1, from a Fresno County Deputy District Attorney.

- Based on our experiences in past cases, there is a direct nexus between wage theft/ labor trafficking and involved in human trafficking. This has been confirmed in studies by both the federal and state prosecutors of human trafficking. Labor trafficking involves the recruitment, harboring, or transportation of a person for labor services, through the use of force, fraud, or coercion.
- Victims can be found in legal and illegal labor industries, including child care, elder care, massage parlors, hair salons, restaurants, hotels, factories, janitorial services and farms. In some cases, victims are hidden behind doors in domestic servitude in a home. Others are in plain view, interact with people on a daily basis, and are forced to work under extreme circumstances in exotic dance clubs, construction, health and beauty services, or restaurants. These conditions exist across the United States.
- The mission of the California Labor Commissioner is to ensure a just day's pay in every workplace in the state and to promote economic justice through robust enforcement of labor laws. By combating wage theft, protecting workers from retaliation, and educating the public, the LCO puts earned wages into workers' pockets and helps level the playing field for law-abiding employers. The LCO investigates complaints and takes enforcement actions to ensure that employees are neither required nor permitted to work under unlawful conditions. Actions taken by LCO investigators include the enforcement of minimum wage and overtime requirements and child labor laws and of employers' requirement to carry workers' compensation insurance; audits of payroll records, collection of unpaid wages, such as prevailing wages on public works jobs; issuing citations for violations of any applicable Labor Code sections; confiscating illegally manufactured garments; and seeking injunctive relief to prevent further violations of the law.
- The LCO adjudicates wage claims on behalf of workers who file claims for nonpayment of wages, overtime, or vacation pay, pursuant to California Labor Code sections 96 and 98. The LCO focuses on major underground economy industries (including the industries mentioned above) in California where labor law violations are the most rampant.
- Pursuant to the California Labor Code, this LCO Registration Services unit administers exams, issues and renews permits, licenses, certifications, and registrations to the following industries: Agricultural (Farm Labor Contractors and Employers of Minors), Construction (Public Works Contractors and Electricians seeking certification), Entertainment (Work permits for minors, child performer services providers), Garment (Manufacturers and Contractors, Employers of Industrial Homeworkers), Car Washing and Polishing, and Janitorial Services.
- The garment industry has a disproportionate number of employers who pay less than the minimum wage, do not pay required overtime rates and who violate employment tax and safety laws. Such employers frequently employ undocumented workers who often do not file complaints with State or Federal agencies. Legitimate garment manufacturers operate at a distinct disadvantage. The August 2, 1995, raid on an El Monte sweatshop conducted by joint task force investigators is the most striking example of these labor and health and safety abuses. The El Monte case, which gained national recognition, involved the discovery by teams of State and Federal investigators of Thai immigrant workers who were found to have worked in slave like conditions for an average of 84 hours per week while being paid only \$1.60 an hour.

- The CIU cases are generated mainly through internal referrals from other LCO, local law enforcement, community based organizations, or tips from the public.
 - At the present, the CIU is a small unit with limited resources considering their mission.
- 3. Please describe the department's process for finding and evaluating whether to investigate a labor trafficking case.**
- **How do investigators find these types of cases? (For example, do they use data to strategically target potential industries or work sites, receive tips from the public or elsewhere, or some other means?) Are there standard protocols or checklists for identifying and reporting potential trafficking situations?**
 - DIR does not proactively look for labor trafficking cases because DIR does not have authority to investigate or prosecute these cases. However, DIR is implementing proactive and reactive methods to strategically target and investigate labor law violations (including health & safety, wage theft, licensing & registration, and workers' compensation coverage violations). An example of this is the work of the Labor Enforcement Task Force (LETF).
 - LETF, under the direction of DIR, is a coalition of California State government enforcement agencies that work together and in partnership with local agencies to combat the underground economy. In this joint effort, information and resources are shared to ensure employees are paid properly and have safe work conditions and honest, law-abiding businesses have the opportunity for healthy competition. The agency partners include: DIR's Division of Occupational Safety and Health (commonly known as Cal/OSHA) and Division of Labor Standards and Enforcement (commonly known as the Labor Commissioner's Office); the Employment Development Department (EDD); Contractors State Licensing Board; California Department of Insurance; California Department of Tax and Fee Administration (CDTFA); Bureau of Automotive Repair; Alcoholic Beverage Control; State Attorney General and district attorneys throughout California.
 - LETF targeting protocol involves a multiphase process that all inspectors follow. Teams identify potential targets and conduct research to develop a business profile. Lists of potential targets are sent to EDD for screening to learn if the employer is registered with EDD and to determine how many employees the employer has reported. The target lists are screened through the Workers' Compensation Insurance Rating Bureau (WCIRB) to determine if the employer is adequately insured. In addition, LETF screens business names using other agency databases to match on a variety of fields that may indicate areas of noncompliance. The results are added to the business profile and used to prioritize and prepare inspectors for joint enforcement action.
 - **What processes are in place to share data or information with other state agencies or refer labor trafficking cases to prosecutors?**
 - LETF targets several low wage, high hazard industries where underground economy activity is prevalent. Labor trafficking is known to occur in some of these industries (such as restaurant, agriculture, and construction). DIR is committed to worker protection. Our staff often interact with workers who could be potential victims of labor trafficking. Therefore, LETF has developed a partnership and referral process with the California Department of Justice (DOJ) to enable our staff to identify and refer potential labor trafficking cases. If our staff notice potential signs of trafficking while they are doing inspections at businesses or work sites, the staff member will report the details to their manager and a referral will be made to DOJ.

- Additionally, we occasionally receive complaints/leads on the LETF hotline/email/online form with allegations of possible labor trafficking. When we receive these complaints/leads, we refer them to DOJ.
- Law enforcement agencies occasionally contact DIR and ask for our collaboration on cases related to trafficking. A recent example is a multi-agency investigation of massage establishments in the city of Fremont. The Fremont Police Department launched the investigation following numerous complaints of suspected illegal activity happening at these establishments. The Fremont Police Department invited DIR to participate in the investigation to address suspected wage and workers' compensation insurance coverage issues. DIR staff with the Joint Enforcement Strike Force (JESF), along with other State enforcement partners, participated on the investigation. The investigation uncovered massage parlors acting as fronts for prostitution and activities associated with human trafficking. For more information please see this news article: <https://www.nbcbayarea.com/news/local/east-bay/8-massage-businesses-have-permits-revoked-after-investigation/2250671/>
- **How many potential cases of labor trafficking have been identified by investigators within your department and what was the outcome of those cases?**
 - From 2018 to present, LETF has made 11 referrals of potential human/labor trafficking cases to DOJ. These referrals originated from complaints received on the LETF hotline/email/ online form and from LETF staff observing signs of potential trafficking during onsite inspections.

4. Does your department provide training related to labor trafficking? If so, who receives this education and how frequently is it provided?

- We have provided training to all our DIR LETF & JESF staff, as well as EDD & CSLB staff who are partners on the task force. In May 2018 Amanda Plisner, Deputy Attorney General and Statewide Human Trafficking Coordinator for CA DOJ, provided a training to our staff. The training covered definitions of human and labor trafficking, and how our staff could look out for potential signs of trafficking when they are out in the field doing inspections or communicating with workers. Amanda will be providing another training at our next LETF & JESF staff meeting. We had to postpone the meeting scheduled for May 20th due to the COVID 19 crisis.

5. What more is needed to strengthen California's statewide response to labor trafficking?

- We would recommend providing training on labor trafficking to other state agencies that have a role in interacting with workers that may be potential victims of labor trafficking.
- DIR/LETF is grateful to DOJ for providing training and collaborating with us on this important effort. Our staff found the training very insightful. The training helped our staff understand what labor trafficking is and how to look out for potential signs during inspections.
- Increasing understanding and awareness about labor trafficking could help identify potential cases and develop new, collective strategies to combat labor trafficking.